



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income, for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlords' application included another party who was named as a tenant on the tenancy agreement. The Landlords said that they served this tenant by registered mail with a copy of the Application and Notice of Hearing at an address they received from "a friend of a friend." According to the Canada Post online tracking system, the hearing package was not picked up by this tenant. I find that there is insufficient evidence that this tenant was served as required by s. 89 of the Act and as a result, she was removed from the style of cause in this matter.

The Landlords also claimed that they served the other Tenant by registered mail with a copy of the Application and Notice of Hearing at an address where they know he currently resides. According to the Canada Post online tracking system, the hearing package was received by someone else at that address. I find on a balance of probabilities that the Tenant was served with the hearing package as required by s. 89 of the Act and the hearing proceeded in his absence.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
2. Are the Landlords entitled to compensation for damages to the rental unit and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on December 1, 2008 and was to expire on December 1, 2009, however it ended on June 5, 2009 when the Tenant moved out. Rent was \$1,250.00 per month. The Tenant paid a security deposit of \$625.00 at the beginning of the tenancy.

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The Landlords said that the Tenant was supposed to vacate the rental unit on May 31, 2009 because a new tenant was moving in on June 1, 2009, however, he did not vacate until June 5, 2009 and as a result, they lost 5 days of rental income.

The Landlords admitted that they did not do a condition inspection report at the beginning or end of the tenancy. The Landlords claimed, however, that the rental unit was in good condition at the beginning of the tenancy but that there were damages at the end of the tenancy. In particular, the Landlords claimed that the bedroom carpet was 5 years old at the beginning of the tenancy but that it had to be replaced because the Tenant burned a large hole in it and stained it with cayenne pepper and mould.

The Landlords said there was also a burn mark on the wall that damaged the drywall and had to be repaired. The Landlords also said that the cayenne pepper stained the linoleum in the en-suite bathroom as well and it had to be replaced along with the sub-floor. The Landlords further said the door of the rental unit also had to be replaced because it had been kicked in by the police.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that he is responsible for rent for the period June 1 – 5, 2009 in the pro-rated amount of **\$208.33**.

Section 32 of the Act says that a Tenant is responsible for damages to a rental unit caused by his act or neglect but is not responsible for reasonable wear and tear. Reasonable wear and tear is defined in RTB Policy Guideline #1 (at p. 1) as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion.”

I find that the damages for which the Landlords seek compensation were not the result of reasonable wear and tear. Consequently, I find that the Tenant is responsible for compensating the Landlords for their reasonable expenses of repairing the damages. I find that the existing carpet and linoleum were already approximately 6 years old at the end of the tenancy and would have sustained some wear and tear. As these flooring materials have a lifetime of approximately 10 years, I award the Landlords one-half the replacement cost or **\$1,196.73**. I also award the Landlords **\$303.22** for the cost of replacing the front door.

The Landlords also sought the cost of labour for repairing the drywall in the bedroom as well as to repair the front door entrance and re-hang the new door. The Landlords said they had not yet received an invoice from the contractor who did that work but based on estimates they had received for that work, they expected the cost to be approximately \$500.00. At a rate of \$50.00 per hour, that would amount to 10 hours of work which I

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find unreasonable for the repairs in question. Consequently, I award the Landlords **\$375.00** representing 6 hours of work plus an amount for GST and supplies.

As the Landlords have been successful in this matter, they are also entitled to recover their **\$50.00** filing fee for this proceeding. Sections 24(2) and 35(2) of the Act state that a Landlord's right to make a claim against the security deposit for damages to a rental unit is extinguished if the Landlord does not do a move in or a move out condition inspection report and give a copy of it to the Tenant within the time lines provided under the Act.

I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlords to keep the Tenant's security deposit and accrued interest in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

| | |
|-------------------------|-----------------|
| Loss of rental income: | \$208.33 |
| Replacement flooring: | \$1,196.73 |
| Door Replacement: | \$303.22 |
| Drywall & door repair: | \$375.00 |
| Filing Fee: | <u>\$50.00</u> |
| Subtotal: | \$2,133.28 |
| Less: Security deposit: | (\$625.00) |
| Accrued interest: | <u>(\$0.79)</u> |
| Balance Owing: | \$1,507.49 |

Conclusion

A Monetary Order in the amount of **\$1,507.49** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 19, 2009.

Dispute Resolution Officer